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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,925	03/16/2004	Ronald A. Sowers	23612.00	9571

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EXAMINER
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GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 11/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/800,925

**Applicant(s)**

SOWERS, RONALD A.

**Examiner**

Jeffrey L. Gellner

**Art Unit**

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5 and 7-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luddy (US 6,167,651 B1; 8<sup>th</sup> document on 3<sup>rd</sup> page of Applicant's 1449) in view of Stroebel et al. (US 4,588,396) in further view of Brown (US 5,615,516).

As to claim 1, Luddy discloses a Christmas tree watering system (Figs. 1-9) for supplying water to a water receptacle of a Christmas tree stand (30 of Fig. 4B) supporting a Christmas tree (Fig. 4B), the system consisting of a water reservoir (shown in Fig. 3) having a bottom outlet (24 of Fig. 3); a support loop extending from the top of the water reservoir (below 34 in Fig. 4A); means for securing (34 of Fig. 4A) the water reservoir to the Christmas tree; a conduit (26 of Fig. 4A) extending from the water reservoir to the water receptacle, the conduit having an upper end connected to the bottom outlet of the water reservoir (shown in Fig. 4A) and a lower end (shown in Fig. 4B), the lower end of the conduit rigid, so that when pressure is applied the lower to the lower end, the lower end remains open and uncollapsed (in that the lower end is open and at some amount of pressure the conduit would not collapse). Not disclosed is the bottom outlet being the only opening into and out of the water reservoir, with the outlet and the conduit having a coupler that is threaded, and a strip of hook and loop fastening material for securing the lower end of the conduit to the Christmas tree. Stroebel et al., however, discloses a water reservoir

Art Unit: 3643

with the bottom outlet being the only opening into and out of the water reservoir (110 of Fig. 3), with the reservoir and a coupler (region around 16 of Fig. 2) being threaded (region around 16 of Fig. 2); and, Brown discloses the use of hook and loop fastening strip (32 of Fig. 1) secured to the lower end of a conduit and a Christmas tree. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Luddy by using the water reservoir of Stroebel et al. so as to establish a constant height of water around the tree (from Stroebel et al. at col. 2 lines 39-44) and to add a strip of hook and loop fastening material for securing the lower end of the conduit to the Christmas tree as disclosed by Brown to prevent the conduit from moving. the system of Luddy as modified by Stroebel et al. and Brown would inherently perform the “whereby” and “wherein” limitations of claim 1.

As to claim 2, Luddy as modified by Stroebel et al. and Brown further disclose a loop and a hook (shown in Fig. 4A of Luddy).

As to claim 3, the limitations of claim 1 are disclosed as described above. Not disclosed is the use of a strip of hook and loop fastener at the top end of the reservoir. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the system of Luddy as modified by Stroebel et al. and Brown by using a strip of hook and loop fastener at the top end of the reservoir depending upon available fasteners.

As to claim 5, Luddy as modified by Stroebel et al. and Brown further disclose the water reservoir and conduit being plastic (col. 2 lines 17-21).

As to claim 7, Luddy discloses a Christmas tree watering system (Figs. 1-9) in combination with a Christmas tree stand (30 of Fig. 4B) the combination comprising a Christmas

Art Unit: 3643

tree stand and a means for supporting a Christmas tree (Fig. 4B), the stand including a water receptacle (Fig. 4B), the watering system consisting of a water reservoir (shown in Fig. 3) having a bottom outlet (24 of Fig. 3); a support loop extending from the top of the water reservoir (below 34 in Fig. 4A); means for securing (34 of Fig. 4A) the water reservoir to the Christmas tree; a conduit (26 of Fig. 4A) extending from the water reservoir to the water receptacle, the conduit having an upper end connected to the bottom outlet of the water reservoir (shown in Fig. 4A) and a lower end (shown in Fig. 4B), the lower end of the conduit rigid, so that when pressure is applied the lower to the lower end, the lower end remains open and uncollapsed (in that the lower end is open and at some amount of pressure the conduit would not collapse). Not disclosed is the bottom outlet being the only opening into and out of the water reservoir, with the outlet and the conduit having a coupler that is threaded, and a strip of hook and loop fastening material for securing the lower end of the conduit to the Christmas tree. Stroebel et al., however, discloses a water reservoir with the bottom outlet being the only opening into and out of the water reservoir (110 of Fig. 3), with the reservoir and a coupler (region around 16 of Fig. 2) being threaded (region around 16 of Fig. 2); and, Brown discloses the use of hook and loop fastening strip (32 of Fig. 1) secured to the lower end of a conduit and a Christmas tree. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combination/system of Luddy by using the water reservoir of Stroebel et al. so as to establish a constant height of water around the tree (from Stroebel et al. at col. 2 lines 39-44) and to add a strip of hook and loop fastening material for securing the lower end of the conduit to the Christmas tree as disclosed by Brown to prevent the conduit from moving. the system of Luddy

Art Unit: 3643

as modified by Stroebel et al. and Brown would inherently perform the “whereby” and “wherein” limitations of claim 7.

As to claim 8, Luddy as modified by Stroebel et al. and Brown further disclose a loop and a hook (shown in Fig. 4A of Luddy).

As to claim 9, the limitations of claim 7 are disclosed as described above. Not disclosed is the use of a strip of hook and loop fastener at the top end of the reservoir. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the system of Luddy as modified by Stroebel et al. and Brown by using a strip of hook and loop fastener at the top end of the reservoir depending upon available fasteners.

As to claim 10, Luddy as modified by Stroebel et al. and Brown further disclose the water reservoir and conduit being plastic (col. 2 lines 17-21).

### ***Response to Arguments***

Applicant's arguments filed 12 September 2006 have been fully considered but they are not persuasive. Applicant's arguments are: (1) Luddy's frictional connection between reservoir and tube is different than Applicant's threaded connection and motivation to combine Luddy with Stroebel et al. since Stroebel et al. is structurally and functionally unrelated to tree watering (Remarks pages 8-top of 10); and, (2) there is no teaching or incentive to support the combination of Luddy and Stroebel et al. (Remarks bottom half of page 10).

As to argument (1), Luddy and Stroebel et al. both are concerned with flow of fluid from one container to another. Stroebel et al. discloses a way of regulating this flow. Hence, Luddy and Stroebel et al. are structurally and functionally related. Since Luddy is concerned with

Art Unit: 3643

watering of a tree Stroebel et al. is capable of use in this area. The concept of use of a closed reservoir with a threaded outlet coupled to a threaded coupler is known in the tree watering art (see Fig. 2 of US 5,669,178 to Petrovic).

As to argument (2), Examiner considers the incentive for the combination of Luddy and Stroebel et al. to be found in Stroebel et al. at col. 2 lines 39-44. That is to allow the water in the reservoir, or basin, around the Christmas tree to vary only slightly.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate.

Art Unit: 3643

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jeffrey L. Gellner  
Primary Examiner  
Art Unit 3643